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Resolution adopted by the Human Rights Council on 28 September 2018

39/14. Situation of human rights in Burundi

The Human Rights Council,

Guided by the principles and purposes of the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant international human rights instruments,

Recalling also General Assembly resolution 60/251 of 15 March 2006 and Human Rights Council resolution 5/1 of 18 June 2007,

Recalling further Human Rights Council resolutions 30/27 of 2 October 2015, S-24/1 of 17 December 2015, 33/24 of 30 September 2016, 36/2 of 28 September 2017 and 36/19 of 29 September 2017,

Recalling Security Council resolutions 2248 (2015) of 12 November 2015, 2279 (2016) of 1 April 2016 and 2303 (2016) of 29 July 2016,

Reaffirming that States have the primary responsibility to respect, protect and fulfil all human rights and fundamental freedoms,

Stressing the primary responsibility of the Government of Burundi for ensuring security in its territory and protecting its population in compliance with the rule of law, human rights law and international humanitarian law, as applicable,

Reaffirming its strong commitment to the sovereignty, political independence, territorial integrity and national unity of Burundi,

Recalling the Arusha Peace and Reconciliation Agreement for Burundi, which provides the foundation for peacebuilding, national reconciliation and the strengthening of democracy, good governance, pluralism and the rule of law,

Considering that the international community, including the Human Rights Council, can play a relevant role in preventing human rights violations and abuses and in mitigating the risk of escalation of conflict and deterioration in humanitarian situations,

Noting the constitutional referendum of 17 May 2018, which was held in a climate of intimidation and repression,

Welcoming the announcement of the President of Burundi not to run in the presidential election in 2020 as an encouraging sign contributing to opening up public and democratic space ahead of the election and to attaining a rule-based change of power,

Welcoming also the efforts of the facilitator for the inter-Burundi dialogue led by the East African Community, President Benjamin William Mkapa, and the mediator, President Yoweri Museveni, and the renewed commitment expressed by the Heads of State at the nineteenth ordinary summit of the East African Community on 23 February 2018 to a peaceful resolution of the political situation in Burundi by opening up political space and through inclusive dialogue based on the principles of the Arusha Agreement, notably ahead of the presidential election in 2020,

Noting with appreciation the repeated efforts made by the international community, including those by the African Union, the East African Community, the African Commission on Human and Peoples' Rights, the Peacebuilding Commission, the Special Envoy of the Secretary-General for Burundi and the European Union, to find a peaceful, consensual and long-lasting solution to the current crisis,

Taking note of the report of the Secretary-General on the situation in Burundi[1] and the observations and recommendations contained therein, including those on the need to convene an inclusive dialogue and to re-establish cooperation with United Nations human rights mechanisms,

Recalling the statement made by the President of the Security Council on 5 April 2018[2] and Council press statement of 22 August 2018, in which the members of the Council voiced their deep concern at the political situation in Burundi, the slow progress of the inter-Burundian dialogue and the lack of engagement by the Government of Burundi in that process, while expressing alarm at the continuously worrying human rights and humanitarian situation, in particular regarding fundamental freedoms, and recalled the commitments made by the Government during the thirty-sixth session of the Human Rights Council to re-establish full mutual cooperation with the Office of the United Nations High Commissioner in Bujumbura and to accept the visit of a team of three experts from the Office of the High Commissioner,

Recalling also resolution 396 on the human rights situation in Burundi, adopted by the African Commission on Human and Peoples' Rights at its sixty-second ordinary session, held from 25 April to 9 May 2018, in which it called upon the Government of Burundi to conduct without delay transparent and impartial investigations against all those responsible for human rights violations and abuses in order to bring the perpetrators to justice,

Welcoming the work of the Commission of Inquiry on Burundi, including its recent report,[3] and deploring the continued refusal by the Government of Burundi to cooperate with the Commission by, inter alia, denying it access to the country,

Deploring the decision by the Government of Burundi to declare the three members of the Commission of Inquiry on Burundi persona non grata in retaliation for the report presented by the Commission to the Human Rights Council at its thirty-ninth session,[3] and urging the Government to reconsider and revoke its decision,

Deploring also the threats, intimidation and personal attacks being directed by representatives of the Government of Burundi against the members of the Commission of Inquiry, including during the interactive dialogues held by the Human Rights Council and the Third Committee,

Deploring further the lack of follow-up by the Government of Burundi on the recommendations made the Commission of Inquiry in its previous report,[4]

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[1] S/2018/89.

[2] S/PRST/2018/7.

[3] A/HRC/39/63.

[4] A/HRC/36/54 and Corr.1.

Noting the downgrading of the accreditation of the Independent National Human Rights Commission of Burundi from A to B status as of 21 February 2018, and encouraging the State and the Commission to address the recommendations made by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions with regard to facilitating the reinstatement of A status accreditation, in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles),

Regretting the refusal by the Government of Burundi to cooperate fully in the implementation of Human Rights Council resolution 36/2, initiated by the African Group, by cancelling the visas of experts being deployed to the country,

1. *Condemns in the strongest terms* all acts of violence committed in Burundi by all parties or individuals, including the appalling attack against civilians perpetrated in Ruhagarika on 11 May 2018, and expresses deep concern at the continuously worrying human rights and humanitarian situation in Burundi, which particularly affects women and children;

2. *Strongly condemns* all human rights violations and abuses that persist in Burundi, particularly those involving extrajudicial killing, enforced disappearance, arbitrary arrest and detention, cases of torture, and other ill-treatment, sexual or gender-based violence, persecution of members of civil society, journalists and bloggers, members of the political opposition and demonstrators, and restrictions on the freedoms of expression, peaceful assembly and association, contributing to a climate of intimidation among the population;

3. *Expresses grave concern* at the findings of the Commission of Inquiry on Burundi with regard to the increased number of human rights violations and abuses committed by the Burundian defence and security forces, including the national intelligence service, the police and the armed forces and the Imbonerakure, the youth wing of the ruling party, in a climate of widespread impunity, while providing reasonable grounds to believe that some human rights violations may constitute crimes against humanity, as first found by the Commission of Inquiry with regard to the events of 2015 and 2016 in its report;[4]

4. *Expresses particular concern* at the growing role of the Imbonerakure, which the Commission of Inquiry found was being used as a substitute for law enforcement, particularly in the interior of the country, and in this context notes the possible responsibility of the Government of Burundi for the wrongful acts by the Imbonerakure;

5. *Condemns* the practice of widespread impunity for all human rights violations and abuses and related crimes, while noting that the few investigations launched by the Government of Burundi have not yielded any credible or tangible results, and reaffirms its call upon the Burundian authorities to conduct full, impartial, independent, effective and thorough investigations into serious violations and abuses of human rights so that all perpetrators, regardless of their affiliation, are held to account before a court and all victims are allowed access to effective remedy and adequate reparation;

6. *Strongly urges* the Government of Burundi to give due consideration to the recommendations made by the Commission of Inquiry in its reports, and to implement them as appropriate;

7. *Strongly condemns* all statements made inside and outside the country that incite to discrimination, hate, violence or segregation against Burundian citizens, including civil society actors;

8. *Expresses concern* at the deregistration and continued suspension of a number of civil society organizations and political groups in Burundi, and at the intimidation, harassment, arbitrary arrest and criminalization of human rights defenders, most of whom have been forced into exile, and urges the Government of Burundi to ensure a safe and enabling operating environment for human rights defenders and civil society organizations to permit all media outlets to resume their activities free from harassment, intimidation or bullying, and to release all human rights defenders who have been arbitrarily sentenced;

9. *Welcomes* the announcement made by Burundian authorities earlier in 2018 of the release of more than 2,000 prisoners following the presidential pardon granted on 31 December 2017, and calls upon the Government of Burundi to release all those who have been arbitrarily arrested and are still being detained;

10. *Urges* the Government of Burundi to put an immediate end to all human rights violations and abuses to ensure the safety, physical integrity and protection of its population, while fully adhering to international human rights and humanitarian law, to respect, protect and fulfil all human rights and fundamental freedoms for all, including freedom of expression, to promote the rule of law and to ensure accountability for those who have committed unlawful acts of violence;

11. *Calls upon* the Government of Burundi to follow up on and implement the recommendations accepted by the State in the context of its universal periodic review on 18 January 2018 and at its two previous reviews and to, inter alia, take the measures necessary to ensure that the Independent National Human Rights Commission fully complies with the Paris Principles;

12. *Notes* the opening in April 2016 by the Prosecutor of the International Criminal Court of an investigation effective as of 25 October 2017 following the finding made by the Pre-Trial Chamber that the supporting materials presented by the Prosecutor constituted a reasonable basis to proceed with an investigation in relation to crimes against humanity allegedly committed since at least 26 April 2015 by State agents and other groups, such as the Imbonerakure, implementing State policies, and stresses the relevance of the findings and the evidence collected by the Commission of Inquiry to international accountability mechanisms;

13. *Calls upon* the Government of Burundi to cooperate fully with the International Criminal Court in relation to the investigation that was authorized and initiated before the withdrawal of Burundi from the Rome Statute came into force;

14. *Deplores* the continued suspension of cooperation with the Office of the United Nations High Commissioner for Human Rights, underlines the need to enable the Office of the High Commissioner to fulfil its mandate and to resume its activities, including its monitoring and reporting functions, with full access to persons and locations, and urges the Government of Burundi promptly to finalize the agreement with the Office without undue conditions or further delays;

15. *Urges* the Government of Burundi to cooperate fully with the treaty bodies, to allow special procedure mandate holders to visit the country and to stop any reprisal against human rights defenders who are cooperating with international human rights mechanisms, including the Human Rights Council;

16. *Welcomes* the work of the African Union human rights observers in Burundi and reiterates its urgent call upon the Government of Burundi to sign without further delay the memorandum of understanding with the African Union, which will allow the human rights observers and military experts of the African Union to operate fully in the country in fulfilment of their mandated responsibilities;

17. *Recalls* that all States Members of the Human Rights Council should uphold the highest standards in the promotion and protection of human rights and fundamental freedoms, notes the importance of cooperation with international and regional human rights mechanisms as part of those efforts, and deplores the lack of respect shown by the Government of Burundi for those standards;

18. *Encourages* the Government of Burundi to cooperate, without preconditions, with the regionally led mediation efforts to create conditions for an inclusive and genuine inter-Burundian dialogue that ensures the participation of women and involves all relevant stakeholders, including civil society representatives, from both inside and outside the country;

19. *Calls upon* the Burundian authorities to ensure equitable political processes and to enable a safe and open environment that is conducive to the holding of inclusive and transparent democratic elections in accordance with international democratic standards;

20. *Expresses its deep concern* at the difficult situation of Burundians who have fled the country, including of the nearly 400,000 Burundians who are currently settled in five neighbouring countries, underlines the importance of upholding the voluntary nature of return, calls upon Governments in the region to continue their efforts with a view to ensuring that those returns are voluntary, based on informed decisions and in safety and dignity, and welcomes the efforts of neighbouring countries and the international community to provide humanitarian support to those persons;

21. *Requests* the Commission of Inquiry on Burundi to share its report[3] and recommendations with the African Union and all relevant organs of the United Nations for their consideration;

22. *Decides* to extend the mandate of the Commission of Inquiry on Burundi in order for it to deepen its investigations until it presents a final report to the Human Rights Council during an interactive dialogue at its forty-second session and to the General Assembly at its seventy-fourth session, and requests the Commission to present an oral briefing to the Council at its fortieth and forty-first sessions during an interactive dialogue;

23. *Urges* the Government of Burundi to cooperate fully with the Commission of Inquiry, to authorize it to conduct country visits and to provide it with all the information necessary to properly fulfil its mandate;

24. *Requests* the Office of the High Commissioner to provide all the resources necessary to the Commission of Inquiry to allow it to fulfil its mandate properly;

25. *Decides* to remain seized of the matter.

40th meeting
28 September 2018

[Adopted by a recorded vote of 23 to 7, with 17 abstentions. The voting was as follows:

In favour:

Australia, Belgium, Brazil, Chile, Croatia, Ecuador, Germany, Hungary, Iceland, Japan, Mexico, Mongolia, Panama, Peru, Republic of Korea, Rwanda, Slovakia, Slovenia, Spain, Switzerland, Ukraine, United Arab Emirates,[5] United Kingdom of Great Britain and Northern Ireland

Against:

Burundi, China, Cuba, Democratic Republic of the Congo, Egypt, Saudi Arabia, Venezuela (Bolivarian Republic of)

Abstaining:

Afghanistan, Angola, Côte d'Ivoire, Ethiopia, Georgia, Iraq, Kenya, Kyrgyzstan, Nepal, Nigeria, Pakistan, Philippines, Qatar, Senegal, South Africa, Togo, Tunisia]

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[5] The representative of the United Arab Emirates subsequently stated that there had been an error in the delegation's vote and that it had intended to vote against.